

RECEIVED

2010 NOV 19 PM 4: 09

FEC MAIL CENTER

**BAKER
DONELSON**
BEARMAN, CALDWELL
& BERKOWITZ, PC

LINCOLN SQUARE
555 ELEVENTH STREET., NW
SIXTH FLOOR
WASHINGTON, D.C. 20004
PHONE: 202.508.3400
FAX: 202.508.3402

www.bakerdonelson.com

November 17, 2010

Jeff S. Jordan, Supervisory Attorney
Complaints Examination & Legal Administration
Office of the General Counsel
Federal Election Commission
Washington, DC 20463

Re: Matter Under Review 6386

Dear Mr. Jordan:

Thank you for the opportunity to file this response on behalf of Gates Banking & Trust Company in the matter MUR 6386. As outlined in this response, Gates Banking & Trust Company has not violated any provision of the Federal Election Campaign Act or its implementing regulations as alleged or implied in the Herron complaint dated September 29, 2010. Accordingly, the Federal Election Commission should take no more action against Gates Banking & Trust Company.

BACKGROUND

In early July 2010, 8th Congressional District of Tennessee candidate Stephen Fincher applied for a loan from Gates Banking & Trust Company (Respondent) located in Gates, Tennessee, for purposes of his campaign. Respondent, following its usual and customary business practice, analyzed Mr. Fincher's creditworthiness and available collateral and approved the loan application. On July 7, 2010, Stephen Fincher signed a Multipurpose Note and Security Agreement (Attachment A) for a \$250,000 loan at 6.500% per annum directing remittance to Stephen Fincher for Congress (Attachment B). The loan had a November 30, 2010, maturity date, and the loan was cross-collateralized with a Deed of Trust on Mr. Fincher's personal residence, a stop production note, and Mr. Fincher's personal funds on deposit with Respondent in a non-interest bearing account.

On October 13, 2010, Respondent received a letter dated October 6, 2010 from the Federal Election Commission (FEC) requesting Respondent respond to a complaint lodged with the FEC by Herron for Congress, the campaign committee of Mr. Fincher's general election

RECEIVED
FEDERAL ELECTION
COMMISSION
2010 NOV 22 AM 10: 30
OFFICE OF GENERAL
COUNSEL

11044302097

opponent Roy Herron, against Stephen Fincher for Congress. The complaint centered on a \$250,000 loan Respondent made to Stephen Fincher for campaign purposes.

Respondent's original response deadline was October 21, 2010. Prior to that date, Respondent petitioned the FEC for and received a 30-day extension of the deadline (Attachment C), and this response is timely filed in accordance with that extension.

On November 17, 2010, Stephen Fincher repaid the loan in full with interest in accordance with the terms of the July 7, 2010 Multipurpose Loan and Security Agreement.

ALLEGED VIOLATIONS

While the original complaint filed by Herron for Congress does not specifically name Respondent as a party, the complaint alleges several Federal Election Campaign Act (FECA) reporting violations against Stephen Fincher for Congress with respect to the \$250,000 loan including failure to properly report the loan. The complaint further implies that, given the facts alleged in the complaint, Respondent failed to make the campaign loan on a "basis which assures repayment" as required by 2 USC 531(8)(B)(viii).

ANALYSIS

As Respondent outlines below, the \$250,000 loan made to Stephen Fincher complied with FECA and its corresponding regulations. FECA and its implementing regulations permit a candidate or his or her committee to obtain a loan, including a line of credit, from a bank, provided the loan meets the following criteria—

- Bears the bank's usual and customary interest rate for the category of loan involved;
- Is made on a basis that assures repayment;
- Is evidenced by a written instrument;
- Is subject to a due date or amortization schedule.

If a loan fails to meet any of these criteria, an illegal campaign contribution from the bank results. See 11 CFR 100.82(a). In this specific case, Respondent met each of these criteria when making a loan to Mr. Fincher.

1. Bears the bank's usual and customary interest rate for the category of loan involved.

The interest rate for the loan was 6.500%. On the date of the loan, the 6.500% interest rate was 3.25% over New York Prime. This represented the usual and customary interest rate at the time of the loan for this category of loan at this lending institution.

11044302098

2. Is made on a basis that assures repayment.

FEC regulations set out criteria for determining whether a loan is made on a basis that assures repayment. See 11 CFR 100.82(e).

In relevant part, 11 CFR 100.82(e)(1)(i) states a loan is made on a basis that assures repayment if the lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan and the fair market value of the collateral is equal to or greater than the loan amount. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable, and accounts on deposit.

Respondent made the Fincher loan on a basis that assures repayment. Respondent had a perfected security interest in collateral owned by Mr. Fincher. Respondent's standard loan documents (including the Multipurpose Note and Security Agreements memorializing the campaign loan and the crop production note referenced below) cross-collateralize a borrower's loans with his/her other loans at the lending institution.

At the time Respondent made the loan, Respondent held the Deed of Trust (Attachment D) to Mr. Fincher's personal residence and a crop production note with a lien on all of Mr. Fincher's 2010 crops and his personal residence. Respondent's loan analysis showed the fair market value of the equity in these assets far exceeded the campaign loan amount. Documents memorializing Respondent's perfected security interest in the Mr. Fincher's 2010 crops and proceeds are on file with the Tennessee Secretary of State (Attachment E). Given Respondent's perfected security interest in Mr. Fincher's 2010 crops and proceeds and his personal residence, Respondent did not file a separate UCC Financing Statement for the campaign loan on the same assets Respondent already held as collateral.

Additionally, Respondent also possessed right-of-offset to Mr. Fincher's deposit accounts.

In summary, Respondent had a perfected interest in collateral with a fair market value greater than the \$250,000 loan amount. Respondent's loan analysis for the Fincher loan showed the equity in Respondent's existing secured loans coupled with Mr. Fincher's non-interest bearing deposit account substantially exceeded the campaign loan amount. Accordingly, Respondent complied with all applicable FECA requirements making the Fincher loan on a basis that assured repayment.

11044302099

3. Is evidenced by a written instrument.

The loan is evidenced by a written instrument dated July 7, 2010. The Multipurpose Loan and Security Agreement laying out the terms of the loan is attached to this response, and this form is the standard document used by Respondent for such loans.

4. Is subject to a due date or amortization schedule.

As detailed in the attached Multipurpose Loan and Security Agreement, the loan matures on November 30, 2010.

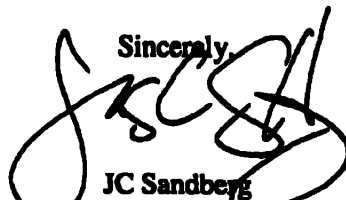
CONCLUSION

As detailed in this response, the loan Respondent made to Stephen Fincher complies with the Federal Election Campaign Act and all applicable federal regulations. Mr. Fincher has repaid the loan in full with interest in accordance with the terms of the collateralized loan agreement he signed on July 7, 2010. With respect to the Fincher loan, the Federal Election Commission should close MUR 6386 and find no reason to believe Gates Banking & Trust Company has violated the Federal Election Campaign Act or Federal Election Commission rules.

If you have any additional questions or need any additional information, please contact me at 202-508-3470.

Thank you for your consideration.

Sincerely,



JC Sandberg

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ

11044302100

11044302101

ATTACHMENT D

11044302102

Instrument prepared by William Dan Douglas, Jr., Attorney, Ripley, TN.

2953
227.72

DEED OF TRUST

STATE OF TENNESSEE
COUNTY OF CROCKETT

} Know All Men By These Presents:

THAT WE, STEPHEN L. FINCHER and wife, LYNN A. FINCHER,

for the purposes hereinafter set out do hereby bargain, sell, transfer and convey unto

BOBBY R. VAUGHN OF MEDWATER COUNTY, TN Trustee, his successors in
trust and assigns the following described property:

Lying, situated and being in the 10th Civil District of
Crockett County, Tennessee, and more particularly described as
follows, to-wit:

Commencing at a point in the south line of Frog Jump
Road, also known as Johnson Grove Road (25 feet from the
centerline), said point being the northeast corner of the Johnny
H. Mayfield and wife, Lana D. Mayfield, property recorded in Deed
Book 98, Page 27; thence with the south line of said Frog Jump
Road the following calls: south 80 degrees 17 minutes 48 seconds
east, 402.45 feet; thence along a curve to the right having a
radius of 2975.00 feet, a delta angle of 10 degrees 28 minutes 21
seconds, a chord direction of south 75 degrees 27 minutes 04
seconds east, a chord length of 543.02 feet and an arc length of
543.78 feet; thence south 71 degrees 23 minutes 52 seconds east,
349.87 feet to a set iron pin, said iron pin being the northwest
corner of the tract herein described and the POINT OF BEGINNING;
thence south 71 degrees 23 minutes 58 seconds west with the south
line of said Frog Jump Road, 232.82 feet to a set iron pin; thence
creating new lines through the Jackie L. Fincher and wife, Bonnie
G. Fincher property recorded in Deed Book 106, Page 162, Tract No.
1 the following calls: south 18 degrees 36 minutes 09 seconds
west, 375.00 feet to a set iron pin; thence north 71 degrees 23
minutes 40 seconds west, 232.38 feet to a set iron pin; thence
north 18 degrees 36 minutes 10 seconds east, 375.00 feet to the
point of beginning and containing 87,119.91 square feet, or 2.00
acres of land as surveyed by Surveying Services, Inc., F.L.S.
#1429, dated January 11, 2002.

The above described property is subject to all utility
easements and all rights-of-way for Frog Jump Road.

Being designated as a portion of Map 59, Parcels 3 and
4, in accordance with the Tax Assessor's Office of Crockett
County, Tennessee.

Being the same property conveyed to Stephen L. Fincher
and wife, Lynn A. Fincher, by deed of Jackie L. Fincher and wife,
Bonnie G. Fincher, of record in Deed Book 121, Page 704-06, in the
Register's Office of Crockett County, Tennessee.

MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX PURPOSES
IS \$200,000.00.

STATE OF TENNESSEE, CROCKETT COUNTY

Recorded and Indexed in Deed Book

5-14-2002 and recorded in

Deed Book

Page

Recording Fee

Tax

2953

Notarized by

Notarized by

Constance A. Craigfield, JR

OUT OF THE PROCEEDS of said sale, the Trustee will:

FIRST: Pay all of the costs of the foreclosure including:

- a. Compensate to himself for his services in the amount of 5% of the proceeds of said sale.
- b. Attorney fees as provided in the terms of the note or other form of indebtedness hereby secured and/or such other attorney's fees as have been properly incurred for legal representation for us, the parties the property hereby conveyed, the indebtedness hereby secured under this instrument.
- c. Reimbursement to himself or other person entitled in same of all sums expended under the terms of this trust for taxes, insurance premiums, repairs, maintenance and the like.

SECOND: He will pay the indebtedness hereby secured that remains unpaid.

THIRD: The balance, if any, he will pay over to the grantors, their heirs, and assigns as their interest in the property herein conveyed may appear.

WE EXPRESSLY AGREE:

1. That we will maintain and take good care of the property herein conveyed, real and personal, and maintain insurance on all buildings and improvements against fire, windstorms and other risks under extended coverage, to its insurable value as the holder of the indebtedness hereby secured may require with the loss payable to said holder as its interest may appear.
2. That we will pay all taxes on said property when due.
3. That we will not remove, demolish or alter the structural character of any improvement upon the premises without the consent of the holder and will maintain premises in good condition and repair and will not commit or suffer waste thereof.
4. That we will not cut or remove timber, minerals, oil or gas without the consent of the holder.
5. That we will properly care for and tend any livestock conveyed herein and plant, cultivate and harvest in due season and in a husbandlike manner any crops conveyed herein.
6. That if we shall fail, refuse or become unable to perform any of the agreements herein provided, the trustee and/or holder of said indebtedness hereby secured may at any time demand payment of the same and the entire of the indebtedness shall become a part of the indebtedness hereby secured and due at the same time and/or the holder of said indebtedness may declare all of his indebtedness hereby secured due at once and proceed to foreclose this deed of trust.
7. That if the indebtedness hereby secured is payable in installments, then a failure to pay any installment when due, shall, at the option of the holder, make all of the remaining indebtedness due at once and said holder may foreclose this deed of trust immediately.
8. The trustee may act by agent as well as in person and said trustee and/or the holder of said indebtedness hereby secured may bid as and purchase any of the property herein conveyed at any foreclosure sale thereof.
9. If the property herein conveyed or any part be encumbered by a prior lien, then the trustee may at the option of the holder of said indebtedness, sell such property at foreclosure subject to such prior lien and/or the holder of said indebtedness may pay off all or any part of such prior lien when delinquent and the cost of so doing shall become a part of the indebtedness hereby secured and/or said holder may declare all of the indebtedness hereby secured due at once and foreclose this trust.
10. If the trustee herein named is absent, fails, refuses, or becomes unable to act when the holder of said indebtedness desires him to act, then said holder may by writing duly acknowledged and recorded in the Register's office of the state and county in which this deed is recorded appoint and substitute another trustee to act in his place and in anything necessary to carry out the intent and purposes of this deed and any trustee so appointed and substituted shall have all the rights, powers, privileges and duties as herein given the original named trustee.
11. Said trustee and any successor are expressly excused from giving, qualifying or making affidavit as such in any court of said county and state.
12. RENEWALS, ETC. This deed of trust secures the above indebtedness and any renewal or extension of that indebtedness, which may be by a new note or notes and, new deeds of trust may be taken to renew such renewals or extensions; and such renewal deeds of trust shall have all the priority of this deed of trust.
13. Neither the property nor any portion thereof or interest therein shall be leased, assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of Gates Banking & Trust Co.. The said bank shall have the sole and exclusive rights as beneficiary hereunder, including but not limited to the power to grant consents, partial releases, substitutions, and assignments, and no other holder shall have any right, title, or interest in or to the loan or any benefits hereof.

Witness our hands on this, the 17th day of May, 2002.



STEPHEN L. FINCHER



LYNN A. FINCHER

TO HAVE AND TO HOLD the said above described property together with any and all lands, tenements, hereditaments, easements, minerals, improvements, appurtenances and privileges, which also belong to the said Trustee, his successors in trust and assigns forever in fee simple.

WE COVENANT THAT WE are lawfully seized and possessed of the said property herein conveyed; that we have a good and lawful right to sell and convey the same; that the same is unencumbered EXCEPT as herein expressly set out and described; and that we will warrant and forever defend the title to the said property unto the said Trustee, his successors in trust and assigns against the lawful claims of all persons whomsoever.

AND I, LYNN A. FINCHER, wife of the above named grantor, STEPHEN L. FINCHER,

....., hereby join in this instrument for the express purpose of waiving, releasing, transferring and conveying all my rights of every kind and nature which I may have in and to the property herein conveyed and especially all of my right of habitation and I agree to be bound by all of the terms of this instrument.

POSSESSION of the said property herein conveyed is to remain in the grantors until default in the terms and provisions hereof at which time or in which event we agree to become the tenants at will of the Trustee and to give immediate possession of the said property upon demand, without any notice, and if we shall fail, refuse, or be unable to do so, then the trustee, and/or purchaser at said foreclosure sale may institute and prosecute to a successful conclusion and obtain of unlawful detainer against us before any court of competent jurisdiction of said county and state for possession of real property and may replevin and recover any personal property herein conveyed.

BUT THIS IS A DEED OF TRUST and is given for the following purposes:

To secure the payment of our indebtedness as follows:

Note of even date herewith in the amount of \$806,000.00 due one (1) year from date, made by Stephen L. Fincher and wife, Lynn A. Fincher, payable to the order of ourselves and by us this date endorsed and negotiated to a holder in due course.

ADDITIONAL LOANS AND INDEBTEDNESS

Said Bank may, at its option, furnish all, or any one of the grantors, additional sums of money and/or credit from time to time during the years 19..... thru both inclusive. All of such additional sums of money and/or credit shall be secured by this deed of trust; PROVIDED THAT THE MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX PURPOSES IS \$ 200,000.00. Subject only to the limitation of amount above set out, this deed of trust shall secure all indebtedness, both direct and indirect, by endorsement and otherwise, which we or any of us shall owe said Bank during the period set out above, together with all renewals and extensions of the same. If the Bank requires and receives additional security for additional loans and/or credit, such security shall be subordinate to the security and lien of this deed of trust.

IF we pay the said indebtedness hereby secured and accrued interest thereon together with all renewals and extensions thereof as the same shall become due and payable and shall otherwise carry out the terms and provisions of this instrument then this deed shall be void and have no effect. BUT IF DEFAULT IS MADE in the payment of the indebtedness hereby secured or in the performance of any of the terms and provisions of this deed of trust, then upon demand of the holder of the indebtedness hereby secured, the Trustee is authorized to take immediate possession of all property conveyed herein and the Trustee is authorized to sell and dispose of any personal property conveyed herein, including crops and/or livestock, for the best cash price obtainable, with or without notice at public or private sale as he deems best; and said Trustee is directed and authorized after advertising the same for sale as provided by law to sell the said estate conveyed herein at public sale at the courthouse of said county, Tennessee to the highest and best bidder for cash, and to execute and deliver a deed to the said real estate to the purchaser at said sale in bar of all rights of equity of redemption and repurchase and of homestead, and all other exemptions of every kind and nature, including the statutory right of redemption under T.C.A. Sec. 66-8-101, all of same being hereby expressly waived.

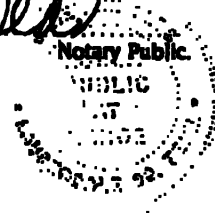
11044302104

State of Tennessee,
County of LAUDERDALE ss:

Before me, the undersigned notary public, duly commissioned and qualified in and for the County
aforesaid, personally appeared **STEPHEN L. FINCHER & wife, LYNN A. FINCHER**
the within named ~~Mariner~~, with whom I am personally acquainted, and who acknowledged that
they executed the within instrument for the purposes therein contained.

Witness my hand, at office, this 6th day of May, 2002.

My commission expires 6/16/2004.



PERSON OR AGENCY RESPONSIBLE
FOR PAYMENT OF TAXES:

Stephen L. Fincher
Name of person or agency

217. Fincher Road, Halls, TN 38040
Address of above party

Deed Of Trust

FROM	TO	TRUSTEE FOR	MORTGAGEE
STEPHEN L. FINCHER & wife, LYNN A. FINCHER	BOBBY R. VAUGHN	GATES BANKING & TRUST CO.	

11044302105

11044302106

ATTACHMENT E

RECEIVED - TENDERED FOR FILING
MISSISSIPPI SECRETARY OF STATE
01/05/10 09:10 AM
310-000540

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
(731) 836-7741

B. SEND ACKNOWLEDGMENT TO: (Name and Address)
Gates Banking And Trust Co.
P.O. Box 10
Gates, TN 38037

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names									
1a. ORGANIZATION'S NAME STEPHEN & LYNN FINCHER FARMS									
OR 1b. INDIVIDUAL'S LAST NAME									
FIRST NAME									
MIDDLE NAME									
SUFFIX									
1c. MAILING ADDRESS 12057 Johnson Grove Road									
CITY Halls									
STATE TN									
POSTAL CODE 38040									
COUNTRY									
1d. SEE INSTRUCTIONS									
ADD'L INFO RE ORGANIZATION FINCHER									
1e. TYPE OF ORGANIZATION Partnership									
1f. JURISDICTION OF ORGANIZATION									
1g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE									
2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names									
2a. ORGANIZATION'S NAME									
OR 2b. INDIVIDUAL'S LAST NAME									
FIRST NAME									
MIDDLE NAME									
SUFFIX									
2c. MAILING ADDRESS									
CITY									
STATE									
POSTAL CODE									
COUNTRY									
2d. SEE INSTRUCTIONS									
ADD'L INFO RE ORGANIZATION FINCHER									
2e. TYPE OF ORGANIZATION									
2f. JURISDICTION OF ORGANIZATION									
2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE									
3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR E/F) - Insert only one secured party name (3a or 3b)									
3a. ORGANIZATION'S NAME Gates Building And Trust Co.									
OR 3b. INDIVIDUAL'S LAST NAME									
FIRST NAME									
MIDDLE NAME									
SUFFIX									
3c. MAILING ADDRESS P.O. Box 10									
CITY Gates									
STATE TN									
POSTAL CODE 38037									
COUNTRY									

4. This FINANCIAL STATEMENT covers the following categories:

2024 FARM CROPS GROWN ON WARRENHAM COUNTY FARM # 3749 - 400 ACRES AND #628 - 1200 ACRES AND HAYWOOD COUNTY FARM #626 - 400 ACRES, #708 - 175 Acres, #808 - 55 Acres and #925 - 40 Acres and best interest in all equipment.

THE MAXIMUM PRINCIPAL DEBTSTANDING FOR TENNESSEE RECORDING TAX PURPOSES IS \$99,999.99.

6. ALTERNATIVE DESIGNATION (if applicable): ☒ LUNARILABOR ☐ CONSIGNEE/CONSIGNOR ☐ BARENEBATOR ☐ BULLETRAY/IN ☐ AG. LION ☐ NON-ACC. FILING

7. THE FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ☒ ESTATE RECORD ☐ DEED RECORD ☐ AS CURRENT ☐ OTHER 1 ☐ OTHER 2

8. OPTIONAL PLAN NUMBER: N/A

9. CHECK TO REQUEST SEARCH REPORTS on: ☒ CURRENT ☐ OTHER 1 ☐ OTHER 2

To be filed at the office of the Secretary of State of Tennessee

PLANS OFFICE COPY - UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

11044302107

The Honorable
Secretary of State



State of Tennessee
Department of State

Uniform Commercial Code
312 Ross L. Parke Avenue
6th Fl. Wm.H. Snodgrass Tower
Nashville, Tennessee 37243
(615) 741-3276

DATE: 01/05/10

To:

GATES BANKING AND TRUST CO
P O BOX 10
GATES, TN 38037

RE:UCCI Filing No. 310000540

DEBTOR INFORMATION

STEPHEN & LYNN FINCHER FARMS
12067 JOHNSON GROVE ROAD
HALLS, TN 38040

SECURED PARTY INFORMATION

GATES BANKING AND TRUST CO
P O BOX 10
GATES, TN 38037

SECURITY DATE: 01/05/15

INDEBTEDNESS: \$500,000.00

This acknowledges the filing of the attached UCCI document. Please review the above data to ensure database information corresponds with information on the submitted UCC form. In the event a discrepancy is found, please note the error and return the entire package to our office.

If we may be of any further service to you, please contact us at (615) 741-3276.

Enclosures: Original Documents

PAYMENT INFORMATION:	Paid Fees	Paid Taxes
	\$15.00	\$687.70

* Please retain for fee and tax purposes

The Department of State is an equal opportunity, equal access, affirmative action public agency.

1/5/10

11044302108